

Labor Standards Complaint Process

Filing a Complaint

Any current or former employee may file a complaint against a place of employment alleging the employee has not been paid all agreed upon wages. The department may also receive complaints from **anyone** alleging a place of employment has violated one or more state labor standards requirements (i.e. overtime, minimum wage, child labor, etc.). On Plant Closing/Mass Lay-Off Notification law complaints, the filing party must be affected by the action in order to file a complaint with the department. Claims for unpaid wages must be filed either with the department or in court within two years of the date when the wages were earned and payable. The department may not accept claims for wages earned more than two years before the department receives the complaint.

Important Notice

Wisconsin law prohibits an employer or person from retaliating against an individual for the following reasons.

- 1) The individual defends a right s/he has under state labor standards laws.
- 2) The employer or person thinks the employee may defend her/his rights under state labor standards laws.
- 3) The individual participates in a labor standards investigation by the department.

Persons who believe an employer or person may have retaliated against them for one of these reasons may file a complaint with the department.

Complaint Investigations

The person assigned to investigate a labor standards complaint will mail the employer a letter informing the employer of the complaint, who filed the complaint and what will happen next. With child labor and plant closing notification cases, the department will investigate the place of employment on behalf of all affected parties employed there. The investigator when commencing an investigation will seek access to the employer's time and payroll records for all employees. The investigator's primary goal in the investigation is to determine if the employer complied with the law and, if not, to document violations discovered.

On minimum wage, overtime and other unpaid wage complaints, the department limits its investigation to the persons listed in the complaint who potentially have unpaid wages due. Within fifteen days of receiving the complaint, the investigator will send a letter to the employer informing the employer of the complaint and who filed the complaint. In the letter, the investigator gives the employer the option of paying the disputed wages or for the employer to offer their position on the complaint and any information the employer may have to support its position. The investigator may also request the employer send the investigator information the investigator believes will be helpful in resolving the wage controversy.

In processing unpaid wage complaints, the investigator, where appropriate, will provide all parties with copies of correspondence received from or sent to other parties, to keep everyone informed of progress in the investigation.

The department strives to assist all parties to an unpaid wage complaint to reach a voluntary settlement of the complaint. Throughout the investigation of the complaint, the investigator remains willing to discuss settlement of the complaint with the parties. On minimum wage and overtime complaints, however, the department, the employer or the complainants have a legal right to settle the complaint for a lower wage than the wage required to be paid by state law.

The department does not represent employers or complainants in unpaid wage complaints. Both employers and complainants have a responsibility in unpaid wage complaints to present information that establishes the validity of their position on the complaint. Where settlement of the complaint does not occur, the investigator must render a written determination on the outcome of the complaint. In valid complaints, the determination will also advise the employer what amount of wages the investigator believes is due.

Administrative Reviews of Determinations

If either party disagrees with the initial determination, that party may submit a written request to the investigator to have the investigator's determination administratively reviewed by the department. The request for review should contain any written arguments the party wishes the reviewer to consider and any new information that has not previously been considered by the department. The reviewer assigned by the department will review

the entire complaint record including all information previously submitted by all parties as well as the request for review and the other parties' response to that request. The reviewer will issue a written final determination to all parties. If the complainant is not satisfied with the final determination, the complainant may elect to file suit against the employer in court on their own to pursue collection of the disputed wages. If an employer disagrees with the wages determined to be owed, the employer may elect not to pay those wages. The department then may forward the complaint to the district attorney to commence litigation in civil or criminal court to collect the disputed wages.

Litigation of Wage Complaints

State law permits the district attorney to request the court in civil cases to award employees an additional 50% increased wage beyond the wages found due by the court as compensation for the delayed payment. The district attorney may also elect to prosecute an employer criminally when the employer has the ability to pay wages and withholds payment to secure a discount on the wages owed or to hinder, harass, annoy or defraud the employee. Potential criminal penalties include a \$500.00 fine and up to 90 days in jail.

Employer Self-Audits

Since unpaid wage complaints involving minimum wage or overtime issues may affect other current/former employees who are not listed in the complaint, the department may request the employer conduct a self-audit of its place of employment if the complaint before the department proves to be valid. Employers conducting self-audits will receive directions concerning the scope of the audit and a deadline by which to complete the audit and pay any wages due employees. If employers do not resolve similar unpaid problems in the self-audit and the department subsequently documents these unpaid wage problems, the employer will be billed 150% of the unpaid wages. In other words, the department will bill the employer for the unpaid wages and an additional 50% penalty wage. This penalty wage applies to unpaid wages found due in the self-audit period and any similar unpaid wages related to the self-audit problem that were earned after the self-audit period ended.

Employers may of course choose not to voluntarily pay the unpaid wages and penalty wages to the department. If that occurs, the department will ask the Department of Justice to prosecute the employer in civil court to collect the unpaid wages. State statutes permit the department to request the court to assess a 100% penalty wage on unpaid wages documented in a department audit where the employer had previously been asked to correct those unpaid wage problems through a self-audit. The employer thus has three choices:

- 1).** It may conduct the self-audit, pay any unpaid wages on an equity basis, and comply with the law in the future.
- 2).** It can ignore the self-audit, have the department perform the audit and pay employees with unpaid wages due an amount equal to 150% of the wages due.
- 3).** It may refuse to pay the wages found due by the department, be sued in civil court and, if it loses in civil court, pay employees an amount equal to 200% of the wages originally earned.

For more information, contact us.

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